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OFFICE OF PETITIONS

In re Application of	:	
Carlos Mendes	:	
Application No. 09/641,790	:	ON PETITION
Filed: August 18, 2000	:	
Attorney Docket No. 10646-007-U20	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 6, 2004 and supplemented on January 18, 2005, to revive the above-identified application.

The petition is **GRANTED**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

A non-final Office action was mailed to applicant on July 3, 2002, which set a three-month shortened statutory period for reply. Since no reply was received and no extensions of time under the provisions of 37 CFR 1.136 were obtained, the application became abandoned on October 4, 2002.

Petitioner alleges that the previous attorney of record, Mr. George Bode, deceived applicant into believing that the application was being properly prosecuted and as a result, the deceit led to the ultimate abandonment of the application. Petitioner states, "Mr. Bode deceived the Applicant after having failed to respond to the non-final Office action mailed 07/03/2002, and that his

deception included concealing this omission.” In support, petitioner cites *In re Application of Robert Lonardo*, (1990 Commr. Pat. 18, 17 USPQ2d 1455) as the relevant case law where it is stated, “when an attorney intentionally conceals a mistake he made, thereby depriving the client of a viable opportunity to cure the consequences of the mistake, the attorney’s mistake is not attributed to the client.”

Petitioner has provided copies of numerous correspondences between the sole inventor, Mr. Mendes, and Mr. Bode to support the allegation of unintentional delay. This evidence demonstrates that Mr. Mendes made constant inquiries to Mr. Bode. Further, the statements presented in the petition show that Mr. Bode assured applicant that he was taking action to correct problems in this application and Mr. Mendes’ other applications. Additionally, petitioner asserts that each time “Mr. Mendes reached a point of seeking other counsel, Mr. Bode was able to reassure Mr. Mendes that, despite delays and lack of documentation, Mr. Bode had taken necessary corrective action and what was required was to wait for a response from the Patent Office.” The statements made in the petition and the evidence provided confirms petitioner’s allegations of Mr. Bode’s deceit.

Having met all of the requirements noted above, the application is again revived.

The file is being referred to Technology Center Art Unit 3721 for further prosecution.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223



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